



Signed and Filed: April 13, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Debtors.) Date: April 14, 2020
Time: 10:00 AM
Place: Courtroom 17
450 Golden Gate Ave.
16th Floor
San Francisco, CA
☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors
** All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

ISSUES FOR COUNSEL TO ADDRESS AT THE APRIL 14 HEARING
ON THE TCC STANDING MOTION

The briefing to date raises myriad issues that appear to go far beyond the initial request by the TCC in its Standing Motion ("Motion"). There is no need to revisit them now. It is enough to state that the Debtors and the TCC are at odds over what is at stake in the Motion and what applicable insurance issues control; the TCC and the Lead Plaintiff are at odds over whether

1 the absolute priority rule has any relevance, and what each
2 wishes to gain by the Motion. What seems missing from the
3 discussion, however, are the following threshold questions that
4 trouble the court and tempt it to do nothing but deny the Motion
5 and await further developments.

6 First, motions to dismiss by the non-debtor defendants have
7 been submitted for decision by Judge Davila in the Securities
8 Litigation. The parties have represented to this court
9 (although this court has not examined those papers to confirm)
10 that defendants there have not argued that the claims are
11 derivative. Or stated differently, as Debtors now argue, the
12 more precise issue is whether the Securities Litigation Claims
13 are property of the Debtors or of the present and former
14 securities holders (See Dkt. No 6739, at fn. 3).

15 If this court allows the TCC to prosecute its proposed
16 Complaint for Declaratory Judgment (Dkt. No. 5972-2) in this
17 court, what happens if there are inconsistent outcomes? Stated
18 specifically, if Judge Davila denies the pending motions to
19 dismiss, is he implicitly if not explicitly concluding that the
20 Plaintiffs' claims there are direct claims and thus not the
21 Debtors' property? Could that be reconciled with a ruling here
22 that the claims are the Debtors' derivative claims, and can be
23 assigned to the TCC?

24 Next, the Securities Litigation is stayed as to the
25 Debtors, so what purpose would be served by the proposed
26 Complaint that seeks injunctive relief under 11 U.S.C. §
27 362(a)(3)? And on a related point, if all that is presently
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1 prosecuted in that action are claims against non-debtors, where
2 is there jurisdiction, or even a good reason, to enjoin at all?

3 More importantly, over the objection of the Lead Plaintiff,
4 this court denied its FRCP 23 motion and authorized a process
5 that is still pending, namely the assertion of direct claims
6 against the Debtors under Securities and Securities Exchange
7 laws. At present there is no information available to the court
8 as to who and how many claimants have come forth. How,
9 therefore, can the TCC justify seeking to press an unfiled
10 action against known defendants who are not pressing their
11 claims against the Debtors, but not including in their proposed
12 action the real (and presently unknown) parties who would be
13 asserting claims against the Debtor? A ruling either way on the
14 Complaint would not bind those unknown claimants.

15 Finally, the TCC makes the problem more circular and more
16 unsolvable at present by invoking the absolute priority rule
17 notwithstanding the uncontroversial proposition that all claims
18 that are or will be asserted by the Securities and Securities
19 Exchange law claimants are subordinated under 11 U.S.C. §
20 510(b), to the extent that are against the Debtors. As asserted
21 against present or former officers and directors or investment
22 bankers the absolute priority has no application.

23 At the April 14 hearing at 10:00 AM, counsel for the TCC
24 and for the Securities Plaintiffs will each have thirty minutes
25 for oral argument, including time for rebuttal by the TCC.
26 Counsel for Debtors and for the OCUC will have a total of thirty
27 minutes, to be shared as they agree.

1 All parties should understand that unless something
2 remarkable straightens out this very confusing and somewhat
3 circular mess, the court will deny the Motion, wait for the
4 extended claims deadline to pass, for Judge Davila to rule and
5 for the assignment of claims to the TCC to become effective. If
6 in the meantime the Debtors move for approval of any settlement
7 of some or all of the district court Securities Litigation, or
8 related claims implicating their D & O coverage, the TCC and all
9 other interested parties will be provided a right to be heard
10 under FRBP 9019.

11 ***END OF ORDER***
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